

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD MARSHALL,
Petitioner,

v.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Respondent.

No. 1:21-cv-00859-NONE-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS

(Doc. No. 3)

Petitioner Gerald Marshall is confined at Atascadero State Hospital and proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 2, 2021, the assigned magistrate judge issued findings and recommendations, recommending that the petition be dismissed. (Doc. No. 3.) Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. (*Id.* at 2–3.) No objections have been filed, and the deadline to do so has expired.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
3 magistrate judge's findings and recommendations are supported by the record and proper
4 analysis.

5 Further, the court notes that a certificate of appealability is not required because this
6 habeas action is proceeding pursuant to 28 U.S.C. § 2241 thus is not a habeas proceeding in
7 which the detention complained of arises out of process issued by a state court. *Forde v. U.S.*
8 *Parole Commission*, 114 F.3d 878 (9th Cir. 1997) (citing *Ojo v. INS*, 106 F.3d 680, 681–682 (5th
9 Cir. 1997), and *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996)).

10 Accordingly,

- 11 1. The findings and recommendations issued on June 2, 2021, (Doc. No. 3), are
12 adopted in full;
- 13 2. The petition for writ of habeas corpus is dismissed;
- 14 3. The Clerk of the Court is directed to assign a district judge to this case for the
15 purpose of closing the case and then to close the case; and
- 16 4. In the event a notice of appeal is filed, no certificate of appealability is required.

17 IT IS SO ORDERED.

18 Dated: **October 11, 2021**

19 
20 UNITED STATES DISTRICT JUDGE